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ABSTRACT

Regulations implementing Title IX of the Education Amendments of 1972 were published in 1975 amid considerable speculation over their impact on college student affairs. More than one year later, there does not appear to be substantial understanding in the higher education community of what Title IX has meant for students and for administrators. Title IX regulations may already have had some impact on the treatment of women college students. At a minimum, it has compelled college officials to take a close and critical look at the effect of their policies and practices on students' college careers and on their postgraduate plans. At the same time, there may be other aspects of campus life where disparate treatment of men and women students continues to occur. One major issue remains unexamined: the policies and procedures the Office of Civil Rights will use to monitor and enforce Title IX. Until an implementation plan is made known, compliance will depend on the good faith actions of college and university administrators; consequently, the full impact of Title IX cannot be known. (Author/MSE)

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KEEPING UP WITH TITLE IX

Carol Herrnstadt Shulman

In July 1975, regulations implementing Title IX of the Education Amendments of 1972, as amended, were published amid considerable public speculation over their impact on college student affairs. As is generally known, Title IX prohibits discrimination on the basis of sex in any educational program or activity receiving federal financial assistance. With some exceptions, virtually all higher education institutions are affected.* Title IX and its regulations stirred controversy because they presented colleges and universities with new challenges. First, Title IX is the only federal opportunity law that applies specifically to students and therefore involves oversight of student-institutional relationships. Second, the regulations place the initial burden of *monitoring compliance* on the institution rather than on the government.

Now, more than one year later, the public debate over Title IX has subsided. This decreased attention may have resulted from the nature of the Title IX regulations, which make implementation very much a private, individual campus concern, and which have not appeared to encourage colleges and universities to exchange information on their compliance activities. Further, the paucity of information available on campus responses may also have resulted from the grace period for institutional self-monitoring allowed by the Office for Civil Rights. In the past, interchanges between government officials and institutions over implementing regulations have frequently fostered public discussions. Under Title IX, such exchanges of information need not occur until after September 30, 1976, when institutions had to officially declare to the Office for Civil Rights the status of their compliance efforts.

This essay will examine developing federal relations with colleges under the Title IX regulations; it also will look at some institutional efforts to achieve compliance.

*The regulations, of course, also apply to elementary and secondary education.

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Title IX Regulations

Early on, the Title IX regulations ("Nondiscrimination on the Basis of Sex" 1975) establish the federal intention to leave to the institutions the initial responsibility for determining their compliance status and for initiating remedial and affirmative action to achieve compliance. Federal oversight and intervention is the final step in the monitoring process, following institutional action. The purpose of this approach appears to be to keep federal involvement in Title IX procedures to a minimum. In his testimony before the House Subcommittee on Postsecondary Education's hearings on Title IX, Caspar Weinberger, then Secretary of Health, Education and Welfare, explained that the regulations were written to provide for institutional action

> ... because we believe voluntary enforcement and provisions that focus on voluntary enforcement and more or less direct the colleges to get enforcement of this kind of their own are preferable to setting up a large Government police force to go in and gather its own data and its own rather rigid enforcement (Weinberger 1975, p. 465).

Accordingly, the regulations require institutions to follow several steps designed to achieve voluntary compliance. First, they call upon the institutions to conduct a self-evaluation "... in terms of the requirements of [these regulations], its current policies and practices and the effects thereof concerning admission of students, treatment of students ..." (§86.3 (c)).

This self-evaluation is not merely a descriptive document but an instrument for reform. Based on the self-evaluation, the institution is required to develop plans for modifications and remedial actions to eliminate current discriminatory policies and practices and to overcome the effects of past discriminatory actions. It should also be noted that these self-enforcement requirements do not call for *but do permit* institutions to take affirmative action "to overcome the effects of conditions which resulted in limited participation ... by persons of a particular sex" (§86.3 (b)).

The regulations appear to require that modifications and remedial actions must be taken by July 21, 1976 (§86.3 (k) (i-iii)), but it is apparent that institutions may need more than one year to complete their remedial actions. The most common interpretation of this requirement is that to be in compliance, an institution must complete plans for remedial action, including timetables, by July 21, 1976 (McCune and Matthews 1976). The modifications and remedial action plans must be on file at the institution and available upon request to the Office for Civil Rights (§86.3 (d)). From the regulations it is unclear whether the self-evaluation must also be on file and available for inspection; but again, most interpretations of the regulations presume that the institution would keep its self-evaluation on file (Taylor and Shavlik 1976).

Second, in keeping with its self-enforcement approach, the regulations require the institution to assign to at least one employee the responsibility for coordinating the institution's Title IX compli-

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ance efforts and for investigating any complaints of noncompliance or violation of the Title IX regulations. Also, the institution must notify employees and students of this person's appointment (§86.8 (a)).

Third, the government has taken the unique step of requiring institutions to develop and adopt grievance procedures for students and employees to deal with complaints of Title IX violations (§86.8 (b)). Complainants, however, do not have to follow these procedures before filing a charge with the Office for Civil Rights (McCune and Matthews 1976).

These institutional self-monitoring actions are the foundation of the government's Title IX compliance efforts. The government's initial formal contact with institutions occurs after the institutions complete and return to the Office for Civil Rights "assurance" forms, which were due by September 30, 1976 (§86.4). In effect, the government's involvement with Title IX enforcement does not begin until after these assurance forms are received and reviewed. The assurance form is a checklist that requires institutions to report on their progress in the areas discussed above: grievance procedures; Title IX coordinator designated; status of the self-evaluation, modifications, and remedial action requirements (Gerry 1976).

These self-monitoring regulations precede the sections that describe prohibited discriminatory procedures and situations in education programs and activities (§86.24-86.30). Here, the regulations deal in areas of student-institutional relationships that have not previously been subject to federal rulemaking, for example, recruitment and admissions, counseling, financial aid, curricular requirements, and athletics. In contrast to the self-monitoring regulations, these are very detailed and, on the surface, may be considered intrusive. But there has been so little public discussion of the regulations that it is difficult to know how to weigh their effect. Institutions may also vary in their findings of what regulations are troublesome, depending upon already existing policies and procedures. A sampling of the requirements in some areas may suggest some difficulties presented by the federal involvement.

For example, in recruitment and admissions processes, institutions are prohibited from following any practices that have a discriminatory impact on either sex. Thus, institutions may not establish numerical or percentage quotas for either sex in determining who may be admitted (§86.21 (b) (i)), nor may they allow familial, parental, or marital status to affect an admissions decision (§86.21 (c) (1)).

Federal involvement with how institutions allocate their funds may be an issue for college administrators under the regulation on financial aid, which requires that "students [be] selected for award of financial assistance on the basis of non-discriminatory criteria and not on the basis of availability of funds restricted to members of a particular sex" (§86.37 (b) (2) (i)).

In the analysis preceding the regulations, the government explains that under this requirement institutions must rank their students for assistance according to nondiscriminatory criteria, such as academic merit or financial need, and must award funds based on this ranking. If in the process of allocating funds the institution finds itself left with only sex-restrictive funds to award, while there still remain members of the opposite sex who are due to receive assistance, the institution must then "locate additional funding for the [opposite sex] or cease to give awards at that point" ("Nondiscrimination on Basis of Sex," 1975, p. 24129).

The regulations on athletics (§86.41) have aroused substantial debate about the extent of their effect on colleges and universities. The athletics provisions do not require equal expenditures for men's and women's sports as evidence of nondiscrimination, but they do call for equal athletic opportunity, which may be assessed by a number of factors, including:

(i) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;
(ii) The provision of equipment and supplies;
(iii) Scheduling the games and practice time;
(iv) Travel and per diem allowance;
(v) Opportunity to receive coaching and academic tutoring;
(vi) Assignment and compensation of coaches and tutors;
(vii) Provision of locker rooms, practice and competitive facilities;
(viii) Provision of medical and training facilities and services;
(ix) Provision of housing and dining facilities and services;
(x) Publicity "Nondiscrimination on Basis of Sex." (§86.4 (c)).

Although some of these criteria may be relatively easy to meet, the controversy over Title IX's impact on intercollegiate athletics has not subsided. Furthermore, institutions are discovering that differences in educational philosophy between men's and women's athletic programs may complicate the task of determining what constitutes equal athletic opportunity.

Title IX Guides

The Title IX regulations are marked by an absence of specific instructions for procedures colleges and universities should follow to achieve compliance with the self-monitoring provisions. To fill this gap, several sources have developed "how-to" guides for educational administrators. A brief description of these guides may be useful to administrators concerned with learning how Title IX requirements could be implemented at their institutions:

- McCune and Matthews (1976). This manual is addressed to educational administrators at all levels. It discusses five basic general requirements that had to be implemented by July 21, 1976: notification of policy; designation of responsible employee; grievance procedures; institutional self-evaluation; and assurance of compliance. It also offers checklists of actions that should be taken and sample forms for institutional use.
- Taylor and Shavlik (1976a and b). This guide was developed specifically for college administrators and provides step-by-step descriptions of actions administrators should take to meet the self-evaluation requirement. It also includes an analysis of the factors that should be evaluated in the individual areas subject to Title IX coverage, *e.g.* admissions, and education programs and activities.
- Bugenhagen, Caliendo, Jr., and Curtice (1976). This self-assessment guide is designed to help financial aid offices review their policies, procedures, and practices to determine if they are in compliance with Title IX regulations. The questionnaire addresses itself to both the proportions of aid received by men and women, as well as the institution's prevailing policies that determine these proportions.
- Caliendo, Jr. (1976). This self-assessment guide for intercollegiate athletics is similar in purpose and format to the financial guide above.
- Dunkle (1976). In response to the complexities of the athletics issues, this guide offers a detailed explanation of what the regulations require and focuses on how to achieve equal athletic opportunity.

Responses to Title IX

Despite Title IX's implementation more than one year ago, there does not appear to be a substantial understanding in the higher

education community of what Title IX has meant for students and for administrators. Information about self-evaluation plans, including recommendations for modifications and remedial actions, has not been widely circulated. Furthermore, communications on Title IX between colleges and universities with their national organizations, which are frequently a source of information, have been uncommon. However, selected aspects of self-evaluation reports and information on implementation procedures have become available. This section will discuss two areas about which information has been obtained: athletics and student grievance procedures.

Athletics

Two issues dominate the discussion on Title IX and athletics: the philosophies of men's and women's athletics and financial support for the programs. On the issue of philosophy, it is widely recognized that men's and women's programs frequently have had different origins and therefore differ in their goals and structure. Many men's intercollegiate athletic programs developed separately from their physical education programs and have concentrated on national or regional competitions and spectator sports. In contrast, women's athletic programs are generally more closely linked to the physical education program and they emphasize "instruction, student participation and lifetime sports" (Dunkle 1976, p. 136). In establishing equity for separate programs or in merging these two programs, there is some concern among administrators that the philosophy of one program, generally the women's program, will be lost.

Two institutions have taken different approaches to resolving this problem. At Washington State University, the Ad Hoc Title IX Self-Evaluation Committee recommended that athletics be placed in an "educational context" (Washington State University 1976, p. VI-3). To this end, its recommendations:

> presume competitive athletics to be an integral part of the educational process . . . [they further suppose] that coaching is a form of teaching, and that athletics is of benefit to those who participate. Such a position does not destroy the goal of winning, but attempts to put winning and losing within the educational perspective (p. VI-3).

The University of Minnesota also recognizes that its men's and women's programs have developed differently and finds that there is merit in having a "'separate and different but equal'" policy for its men's and women's athletics programs (University of Minnesota 1976, p. 6). Minnesota's Title IX self-evaluation of athletics also frankly links together the financing of athletics and educational philosophy in its discussion of men's revenue-producing, "big-time," spectator sports. It states that it will not include the expenses of running these programs in several of its comparisons between men's and women's programs because they are of a "different order of magnitude" from the other men's and women's sports (p. 6). Further, the report justifies this separation by pointing out that the "big-time" sports programs provide the financing for the other men's programs and that their competitive status allows the men's intercollegiate athletic director to raise private money for athletics and for the institution. It argues that without these teams and their income, it would be impossible to support the other men's teams and that women's teams would be similarly affected. Given these considerations, they propose a plan that "attempts to reconcile the conflicting fiscal and ethical demands of equal opportunity" (University of Minnesota, 1976, p. 7). However, the university does not anticipate that it will achieve "financial compliance" (p. 1) with Title IX by July 1978. Instead, it offers a plan of phased increases that will lead to full compliance by the 1984-1985 academic year.

Grievance Procedures

The regulation (§86.8 (b)), which requires institutions to adopt grievance procedures for resolving students' Title IX complaints, once again leaves the issues of policy and procedures to the institution's discretion. Consequently, colleges may develop a wide variety of procedures. However, certain elements are common to most grievance processes: impartiality, full disclosure of information between the charging and defending parties, assistance of advisers for both parties, and a step-by-step formal process of hearings and appeals. The Title IX regulation also requires prompt resolution of grievances.

The University of California's instructions to its campus officers on the development of a student grievance procedure appears to incorporate all these elements in its plan. It requires, at a minimum, that campus plans include:

> (a) investigation of the complaint by the designated Title IX Compliance Officer;
> (b) review by an impartial hearing entity;
> (c) an opportunity to present evidence both documentary and testimonial and to confront evidence presented to the contrary;
> (d) the right of the student to be represented at the student's own expense;
> (e) a summary record of the hearing, to be kept by the University for a period of three years subject to provision of existing privacy and disclosure laws; and
> (f) a written recommendation by the hearing entity upon conclusion of the hearing ("Supplemental Memorandum..." 1976. Attachment A).

The central university office also suggests that findings be based on a "preponderance of the evidence," *i.e.* "such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth" ("Supplemental Memorandum ..." 1976, p. 2).

Similarly, Ball State University's grievance procedure for students calls for a verdict based on a preponderance of the evidence. Its plan is also noteworthy for the great attention it gives to the selection of the hearing boards. A separate hearing board—composed of university and student representatives—is named for each complaint. The charging and defending parties will have the opportunity to select their board members.

Both the University of California and Ball State's plans were developed by central offices. In contrast, the University of Delaware delegated the responsibility for writing grievance procedures to four major divisions: academic affairs; student affairs and administration; development; and university treasurer. For example, the grievance procedure for academic affairs was developed by the faculty senate committee on faculty welfare and privileges and the graduate studies committee. Its grievance procedure routes complaints first through a departmental committee, which may or may not include students, with appeals going to the faculty welfare and privileges committee of the university faculty senate. The appeals committee would include two of its regular members and two students appointed each year. Unlike California and Ball State, Delaware's plan does not describe the conduct of the hearings or suggest what the criteria will be for making recommendations.

Conclusion

Title IX regulations may already have had some impact on the treatment of women college students. At a minimum, it has compelled college officials to take a close and critical look at the effect of their policies and practices on students' college careers and on

their postgraduation plans. This activity may create a climate of awareness on campus that in itself can be beneficial to all students. Moreover, it may bring to light an intentional but discriminatory treatment of men and women students in such areas as housing, financial assistance, and curricular requirements that may be readily resolved by modifications in policies and procedures.

At the same time, there may be other aspects of campus life where disparate treatment of men and women students continues to occur. Athletics is an obvious example of an area in which problems may be difficult to remedy. Also, Title IX cannot be a guarantee against inequities in the relations between individual administrators or faculty and students.

In addition to these unresolved questions, there is a major issue that has remained unexamined: what are the policies and procedures the Office for Civil Rights (OCR) will use to monitor and enforce Title IX. Currently, OCR is planning to conduct a computer review of the assurance forms it has received from the institutions. It is likely that determinations about a schedule for overseeing institutional actions will be based on the information yielded by this review. Beyond this, there have been no indications from OCR about how institutional reviews will proceed. Until a plan of action is announced, those who look to Title IX for relief will have to rely largely on the good faith actions of college and university administrators. Until such a plan is implemented, the full-impact of Title IX cannot be known.

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